

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

MICHAEL A. TAYLOR,)
)
Plaintiff,) Case No.: CV-11-170-EFS
)
vs.)
)
THE CITY OF CHENEY; ALLAN)
GAINER and JANE DOE GAINER;) **PROTECTIVE ORDER**
)
Defendants.)

Before the Court, without oral argument, is the parties' Motion for Entry of Stipulated Protective Order, ECF No. [15](#). The parties ask the Court to enter a Protective Order that establishes procedures for the identification and protection of confidential, proprietary, or private information during the discovery phase of this case.

Based on the stipulation of the parties, **IT IS HEREBY ORDERED:**

I. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure

1 and from use for any purpose other than prosecuting this
2 litigation would be warranted. This Order does not confer
3 blanket protections on all disclosures or responses to discovery
4 and that the protection it affords extends only to the limited
5 information or items that are entitled, under the applicable
6 legal principles, to treatment as confidential. As set forth in
7 Section 10, below, this Protective Order creates no entitlement
8 to file confidential information under seal; the procedures that
9 must be followed and the standards that will be applied when a
10 party seeks permission from the Court to file material under
11 seal will be governed by applicable law.

12 **II. PROTECTIVE ORDER**

13 **1. DEFINITIONS**

14
15 1.1. Party: any party to this action, including all of
16 its officers, directors, employees, consultants, retained
17 experts, and outside counsel (and their support staff).

18 1.2. Disclosure or Discovery Material: all items or
19 information, regardless of the medium or manner generated,
20 stored, or maintained (including, among other things, testimony,
21 transcripts, or tangible things) that are produced or generated
22 in disclosures or responses to discovery in this matter.

23 1.3. "Confidential" Information or Items: information
24 (regardless of how generated, stored or maintained) or tangible
25 things that qualify for protection under standards developed

1 under Fed. R. Civ. P. 26(c).

2 1.4. Receiving Party: a Party that receives Disclosure
3 or Discovery Material from a Producing Party.

4 1.5. Producing Party: a Party or non-party that
5 produces Disclosure or Discovery Material in this action.

6 1.6. Designating Party: a Party or non-party that
7 designates information or items that it produces in disclosures
8 or in responses to discovery as "Confidential."

9 1.7. Protected Material: any Disclosure or Discovery
10 Material that is designated as "Confidential."

11 1.8. Outside Counsel: attorneys who are not employees
12 of a Party but who are retained to represent or advise a Party
13 in this action.

14 1.9. House Counsel: attorneys who are employees of a
15 Party.

16 1.10. Counsel (without qualifier): Outside Counsel
17 and House Counsel (as well as their support staffs).

18 1.11. Expert: a person with specialized knowledge
19 or experience in a matter pertinent to the litigation who has
20 been retained by a Party or its/her/his counsel to serve as an
21 expert witness or as a consultant in this action and who is not
22 a past or a current employee of a Party or of a competitor of a
23 Party and who, at the time of retention, is not anticipated to
24 become an employee of a Party or a competitor of a Party. This
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1 definition includes a professional jury or trial consultant
2 retained in connection with this litigation.

3 1.12. Professional Vendors: persons or entities
4 that provide litigation support services (e.g., photocopying;
5 videotaping; translating; preparing exhibits or demonstrations;
6 organizing, storing, retrieving data in any form or medium;
7 etc.) and their employees and subcontractors.

8 2. SCOPE

9 The protections conferred by this Order cover not only
10 Protected Material (as defined above), but also all copies,
11 excerpts, summaries, or compilations thereof, plus testimony,
12 conversations, or presentations by parties or counsel to or in
13 court or in other settings that might reveal Protected Material.

14 3. DURATION

15 Even after the termination of this litigation, the
16 confidentiality obligations imposed by this Order shall remain
17 in effect until a Designating Party agrees otherwise in writing
18 or a court order otherwise directs.

19 4. DESIGNATING PROTECTED MATERIAL

20 4.1. Exercise of Restraint and Care in Designating
21 Material for Protection. Each Party or non-party that
22 designates information or items for protection under this Order
23 must use good faith efforts to limit any such designation to
24 specific material that qualifies under the appropriate
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1 standards. A Designating Party must use good faith efforts to
2 designate for protection only those parts of material,
3 documents, items, or oral or written communications that qualify
4 - so that other portions of the material, documents, items, or
5 communications for which protection is not warranted are not
6 swept unjustifiably within the ambit of this Order.

7
8 Mass, indiscriminate, or routinized designations are
9 prohibited. Designations that are shown to be clearly
10 unjustified, or that have been made for an improper purpose
11 (e.g., to unnecessarily encumber or retard the case development
12 process, or to impose unnecessary expenses and burdens on other
13 parties), may expose the Designating Party to sanctions.

14 If it comes to a Party's or a non-party's attention
15 that information or items that it designated for protection do
16 not qualify for protection, that Party or non-party must
17 promptly notify all other parties that it is withdrawing the
18 mistaken designation.

19 4.2. Manner and Timing of Designations. Except as
20 otherwise provided in this Order (see, e.g., second paragraph of
21 section 5.2(a), below), or as otherwise stipulated or ordered,
22 material that qualifies for protection under this Order must be
23 clearly so designated before the material is disclosed or
24 produced.

25 Designation in conformity with this Order requires:

1 (a) for information in documentary form (apart
2 from transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix the legend
4 "CONFIDENTIAL" at the top of each page that contains protected
5 material. If only a portion or portions of the material on a
6 page qualifies for protection, the Producing Party also must
7 clearly identify the protected portion(s) (e.g., by making
8 appropriate markings in the margins).

9
10 A Party or non-party that makes original documents or
11 materials available for inspection need not designate them for
12 protection until after the inspecting Party has indicated which
13 material it would like copied and produced. During the
14 inspection and before the designation, all of the material made
15 available for inspection shall be deemed "CONFIDENTIAL." After
16 the inspecting Party has identified the documents it wants
17 copied and produced, the Producing Party must determine which
18 documents, or portions thereof, qualify for protection under
19 this Order, then, before producing the specified documents, the
20 Producing Party must affix the legend "CONFIDENTIAL" at the top
21 of each page that contains Protected Material. If only a
22 portion of the material on a page qualifies for protection, the
23 Producing Party also must clearly identify the protected
24 portion(s) (e.g., by making appropriate markings in the
25 margins).

1 (b) for testimony given in deposition or in
2 other pretrial or trial proceedings, that the Party or non-party
3 offering or sponsoring the testimony identify on the record,
4 before the close of the deposition, hearing, or other
5 proceeding, all protected testimony. When it is impractical to
6 identify separately each portion of testimony that is entitled
7 to protection, and when it appears that substantial portions of
8 the testimony may qualify for protection, the Party or non-party
9 that sponsors, offers, or gives the testimony may invoke on the
10 record (before the deposition or proceeding is concluded) a
11 right to have up to twenty (20) days to identify the specific
12 portions of the testimony as to which protection is sought.
13 Only those portions of the testimony that are appropriately
14 designated for protection within the twenty (20) days shall be
15 covered by the provisions of this Stipulated Protective Order.

17 Transcript pages containing Protected Material must be
18 separately bound by the court reporter, who must affix to the
19 top of each such page the legend "CONFIDENTIAL," as instructed
20 by the Party or nonparty offering or sponsoring the witness or
21 presenting the testimony.
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1 (c) for information produced in some form other
2 than documentary, and for any other tangible items, that the
3 Producing Party affix in a prominent place on the exterior of
4 the container or containers in which the information or item is
5 stored the legend "CONFIDENTIAL." If only portions of the
6 information or item warrant protection, the Producing Party, to
7 the extent practicable, shall also identify the protected
8 portions.

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10 4.3. Inadvertent Failures to Designate. If timely
11 corrected, an inadvertent failure to designate qualified
12 information or items as "Confidential" does not, standing alone,
13 waive the Designating Party's right to secure protection under
14 this Order for such material. If material is appropriately
15 designated as "Confidential" after the material was initially
16 produced, the Receiving Party, on timely notification of the
17 designation, must make reasonable efforts to assure that the
18 material is treated in accordance with the provisions of this
19 Order.

20 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 5.1. Timing of Challenges. Unless a prompt challenge
22 to a Designating Party's confidentiality designation is
23 necessary to avoid foreseeable substantial unfairness,
24 unnecessary economic burdens, or a later significant disruption
25 or delay of the litigation, a Party does not waive its right to

1 challenge a confidentiality designation by electing not to mount
2 a challenge promptly after the original designation is
3 disclosed.

4 5.2. Meet and Confer. A Party that elects to initiate
5 a challenge to a Designating Party's confidentiality designation
6 must do so in good faith and must begin the process by
7 conferring directly (in voice to voice dialogue; other forms of
8 communication are not sufficient) with counsel for the
9 Designating Party. In conferring, the challenging Party must
10 explain the basis for its belief that the confidentiality
11 designation was not proper and must give the Designating Party
12 ten (10) days to review the designated material, to reconsider
13 the circumstances, and, if no change in designation is offered,
14 to explain the basis for the chosen designation. A challenging
15 Party may proceed to the next stage of the challenge process
16 only if it has engaged in this meet and confer process first.

18 5.3. Formal Challenge to Designation. If, after
19 engaging in the meet and confer process, a challenging Party
20 still contends that a confidentiality designation was not
21 proper, the challenging Party may at any time give written
22 notice to the Designating Party stating its objection to the
23 confidentiality designation. The Designating Party has twenty-
24 five (25) days from receipt of such written notice to apply to
25 the Court for an order specifically designating the Disclosure

1 or Discovery Material at issue as confidential. The Party
2 seeking such an order has the burden of establishing good cause
3 for the Disclosure or Discovery Material to be treated as
4 confidential.

5 5.4. Treatment of Information While Challenge is
6 Pending. Notwithstanding any challenge to the designation of
7 Disclosure or Discovery Material as confidential, all materials
8 designated as such must be treated as such and subject to this
9 order until one of the following occurs:

10 (a) the Designating Party withdraws its
11 confidentiality designation in writing;

12 (b) the Designating Party fails to apply to the
13 Court for an order designating the material confidential within
14 the time period specified above after receipt of a written
15 challenge to such designation; or

16 (c) the Court decides the material at issue is
17 not subject to protection as confidential under this order.
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1 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 6.1. Basic Principles. A Receiving Party may use
3 Protected Material that is disclosed or produced by another
4 Party or by a non-party in connection with this case only for
5 prosecuting, defending, or attempting to settle this litigation.
6 Such Protected Material may be disclosed only to the categories
7 of persons and under the conditions described in this Order.
8 When the litigation has been terminated, a Receiving Party must
9 comply with the provisions of section 11, below (FINAL
10 DISPOSITION).

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12 Protected Material must be stored and maintained by a
13 Receiving Party at a location and in a secure manner that
14 ensures that access is limited to the persons authorized under
15 this Order.

16 6.2. Disclosure of "CONFIDENTIAL" Information or
17 Items. Unless otherwise ordered by the Court or permitted in
18 writing by the Designating Party, a Receiving Party may disclose
19 any information or item designated CONFIDENTIAL only to:

20 (a) the Receiving Party's Outside Counsel of
21 record in this action, as well as employees of said Counsel to
22 whom it is reasonably necessary to disclose the information for
23 this litigation and who have signed the "Agreement to Be Bound
24 by Protective Order" that is attached hereto as Exhibit A;

25 (b) the named parties to this litigation and the

1 officers, directors, and employees (including House Counsel) of
2 the Receiving Party to whom disclosure is reasonably necessary
3 for this litigation and who have signed the "Agreement to Be
4 Bound by Protective Order" (Exhibit A);

5 (c) experts (as defined in this Order) of the
6 Receiving Party to whom disclosure is reasonably necessary for
7 this litigation and who have signed the "Agreement to Be Bound
8 by Protective Order" (Exhibit A);

9 (d) the Court and its personnel;

10 (e) court reporters and videographers, and their
11 staffs, present at any hearing, deposition, or trial who have
12 signed the "Agreement to Be Bound by Protective Order" (Exhibit
13 A);

14 (f) professional vendors to whom disclosure is
15 reasonably necessary for this litigation and who have signed the
16 "Agreement to Be Bound by Protective Order" (Exhibit A);

17 (g) during their depositions, witnesses in the
18 action to whom disclosure is reasonably necessary and who have
19 signed the "Agreement to Be Bound by Protective Order" (Exhibit
20 A). Pages of transcribed deposition testimony or exhibits to
21 depositions that reveal Protected Material must be separately
22 bound by the court reporter and may not be disclosed to anyone
23 except as permitted under this Stipulated Protective Order.
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25 (h) the author of the document or the original

1 source of the information; and

2 (i) counsel representing clients asserting
3 similar claims against the same defendants, provided that before
4 disclosing any Protected Material to any such counsel, the
5 Receiving Party must notify the Designating Party ten (10) days
6 before disclosing such material in order to give the Designating
7 Party an opportunity to move for a protective order preventing
8 or limiting such disclosure.

9 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
10 **OTHER LITIGATION**

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12 If a Receiving Party is served with a subpoena or an order
13 issued in other litigation that would compel disclosure of any
14 information or items designated in this action as
15 "CONFIDENTIAL," the Receiving Party must so notify the
16 Designating Party, in writing (by fax, if possible) immediately
17 and in no event more than three (3) court days after receiving
18 the subpoena or order. Such notification must include a copy of
19 the subpoena or court order.

20 The Receiving Party also must immediately inform in writing
21 the Party who caused the subpoena or order to issue in the other
22 litigation that some or all the material covered by the subpoena
23 or order is the subject of this Protective Order. In addition,
24 the Receiving Party must deliver a copy of this Stipulated
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1 Protective Order promptly to the Party in the other action that
2 caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the
4 interested parties to the existence of this Protective Order and
5 to afford the Designating Party in this case an opportunity to
6 try to protect its confidentiality interests in the court from
7 which the subpoena or order issued. The Designating Party shall
8 bear the burdens and the expenses of seeking protection in that
9 court of its confidential material - and nothing in this Order
10 should be construed as authorizing or encouraging a Receiving
11 Party in this action to disobey a lawful directive from another
12 court.
13

14 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or
16 otherwise, it has disclosed Protected Material to any person or
17 in any circumstance not authorized under this Stipulated
18 Protective Order, the Receiving Party must immediately (a)
19 notify in writing the Designating Party of the unauthorized
20 disclosures, (b) use its best efforts to retrieve all copies of
21 the Protected Material, (c) inform the person or persons to whom
22 unauthorized disclosures were made of all the terms of this
23 Order, and (d) request such person or persons to execute the
24 "Acknowledgment and Agreement to Be Bound" that is attached
25 hereto as Exhibit A.

1 **9. FILING PROTECTED MATERIAL**

2 Without written permission from the Designating Party or a
3 court order secured after appropriate notice to all interested
4 persons, a Party may not file in the public record in this
5 action any Protected Material. A Party that seeks to file under
6 seal any Protected Material must comply with applicable law.

7 **10. FINAL DISPOSITION**

8 Unless otherwise ordered or agreed in writing by the
9 Producing Party, within sixty (60) days after the final
10 termination of this action, each Receiving Party must return all
11 Protected Material to the Producing Party. As used in this
12 subdivision, "all Protected Material" includes all copies,
13 abstracts, compilations, summaries or any other form of
14 reproducing or capturing any of the Protected Material. With
15 permission in writing from the Designating Party, the Receiving
16 Party may destroy some or all of the Protected Material instead
17 of returning it. Whether the Protected Material is returned or
18 destroyed, the Receiving Party must submit a written
19 certification to the Producing Party (and, if not the same
20 person or entity, to the Designating Party) by the sixty day
21 deadline that identifies (by category, where appropriate) all
22 the Protected Material that was returned or destroyed and that
23 affirms that the Receiving Party has not retained any copies,
24 abstracts, compilations, summaries or other forms of reproducing
25

1 or capturing any of the Protected Material. Notwithstanding
2 this provision, Counsel are entitled to retain an archival copy
3 of all pleadings, motion papers, transcripts, legal memoranda,
4 correspondence or attorney work product, even if such materials
5 contain Protected Material. Any such archival copies that
6 contain or constitute Protected Material remain subject to this
7 Protective Order as set forth in Section 4 (DURATION), above.

8 **11. MISCELLANEOUS**

9
10 11.1. Right to Further Relief. Nothing in this
11 Order abridges the right of any person to seek its modification
12 by the Court in the future.

13 11.2. Right to Assert Other Objections. By
14 stipulating to the entry of this Protective Order no Party
15 waives any right it otherwise would have to object to disclosing
16 or producing any information or item on any ground not addressed
17 in this Stipulated Protective Order. Similarly, no Party waives
18 any right to object on any ground to use in evidence of any of
19 the material covered by this Protective Order.

20 **IT IS SO ORDERED.** The District Court Executive is directed
21 to enter this Order and distribute copies to counsel.

22 **DATED** this 15th day of December 2011.

23 S/ Edward F. Shea
24 Edward F. Shea
25 UNITED STATES DISTRICT JUDGE

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